



**DEPARTMENT OF PESTICIDE REGULATION
PESTICIDE REGISTRATION AND EVALUATION COMMITTEE
Meeting Minutes – January 14, 2010**

Committee Members/Alternates in Attendance:

Lynn Baker, Air Resources Board (ARB)
Anna Fan, Office of Environmental Health Hazard Assessment (OEHHA)
Martha Harnly, Department of Public Health (DPH)
David Luscher, Department of Food and Agriculture
Stella McMillin, Department of Fish and Game (DFG)
Ann Prichard, Department of Pesticide Regulation (DPR)
Rebecca Sisco, University of California, IR-4 Program
Patti Tenbrook, U.S. EPA Protection Agency, Region 9
Elena Yates, Integrated Waste Management Board (CIWMB)

Visitors in Attendance:

Brian Bret, DowAgrosciences
Nasser Dean, Western Plant Health Association (WPHA)
Billy Gaither, Pest Control Operators of California
Anne Downs, DPR
Dave Duncan, DPR
Amy Duran, DPR
Roberta Firoved, California Rice Commission
Terry Gage, California Applicants' Attorneys Association
Anne Katten, California Rural Legal Assistance Foundation
Dennis Kelly, Syngenta Crop Protection
Kyle Lawson, Lawson and Associates
Artie Lawyer, Technology Sciences Group
Marshall Lee, DPR
Eileen Mahoney, DPR
Jeanne Martin, DPR
Gabrielle Meindl, Environmental Solutions Group
Doug Okumura, Lawson and Associates
Daniel Oros, DPR
Eric Paulsen, Clark Pest Control
Renee Pinel, Western Plant Health Association
Jay Schreider, DPR
Randy Segawa, DPR
Pam Wofford, DPR

1. Introductions and Committee Business – Ann Prichard, Acting Chairperson, DPR

- a. About 24 people attended the meeting.



- b. No correction to the minutes of the previous meeting held on November 18, 2009, was identified.

2. Potential Impacts of Pesticide Use Injunctions on Pesticide Use and the Protection of Endangered Species - Polo Moreno, DPR

Over the last 6 years, three separate pesticide use injunctions have resulted from litigation between the U.S. Environmental Protection Agency (U.S. EPA) and environmental advocacy groups such as Californians Against Toxic Substances (CATS), Washington Toxics Coalition and the Center for Biological Diversity.

The first injunction was put into place in February of 2004, and is known as the “Salmonid Injunction.” It resulted from a lawsuit by environmental and fishery groups alleging that U.S. EPA failed to solicit National Marine Fisheries Service (NMFS) formal consultation on the risks from 38 pesticides to 26 distinct populations of Chinook salmon, Coho Salmon and Steelhead. This injunction imposes prohibitions on the use of 38 active ingredients, 100 yards by air and 20 yards by ground from Salmon Supporting Waters. It also requires U.S. EPA to consult with NMFS on the potential hazards posed by the 38 active ingredients to Salmon populations. The first round of consultations in 2008 resulted in a Biological Opinion for chlorpyrifos, diazinon and malathion. The Department of Pesticide Regulation (DPR) expressed disagreement with the Biological Opinion and posted comments to the public docket. The Biological Opinion proposed buffers of 500 feet for ground applications and 1000 feet for aerial applications. Additionally, it imposes requirements for fish kill reporting, runoff prevention measures and environmental monitoring. In response, U.S. EPA decided to impose variable buffers depending on application rate + droplet size + size of adjacent body of water. Nevertheless, for aerial applications the resulting buffers are still almost 1000 feet. For ground applications, the resulting buffers can be a minimum of 100 feet.

In November of 2009, U.S. EPA submitted 40 draft California Bulletins for chlorpyrifos, diazinon and malathion. The bulletins were reviewed by DPR’s Endangered Species Program staff and comments sent to U.S. EPA. In January of 2010, U.S. EPA submitted the revised bulletins, including a test version of an application intended to help pesticide applicators calculate the corresponding buffer for their intended application rate, droplet size and body of water adjacent to the application site. Once these bulletins are finalized, they will be posted on U.S. EPA’s Bulletins Live Web site at http://137.227.242.131/espp_front/view.jsp. U.S. EPA is asking registrants of chlorpyrifos, diazinon and malathion to voluntarily modify labels of pesticides containing these active ingredients and refer users to the Bulletins Live Web site in order to find out which buffer size applies to the product they intend to apply. Registrants will be granted

18-months to generate new labels or update existing product. If the registrants do not agree to modify their product labels, they face cancellation proceedings. The use limitations imposed by the bulletins will be voluntary until product labels are modified.

The second injunction is known as the “Stipulated Injunction and Order for Protection of California Red-Legged Frog.” Effective on October 20, 2006, the lawsuit by the Center for Biological Diversity alleged that U.S. EPA failed to solicit U.S. Fish & Wildlife Service (FWS) formal consultation on the risks from 66 pesticides to California red-legged frog. It imposes prohibitions for use of 66 active ingredients - 200 feet by air, and 60 feet by ground from California red-legged frog’s aquatic and upland habitats occurring in 33 counties. As with the Salmonid injunction, the Ninth District Court in Seattle ordered U.S. EPA to initiate formal consultations with the FWS, and schedule it in such a way that it can be completed in approximately 5 years. Since 2007, U.S. EPA has been working on effects determinations for all 66 active ingredients included in this injunction. They are concurrently submitting them to the US Fish & Wildlife Service for their analysis and expected Biological Opinions.

The third and latest injunction has not yet been finalized. It is still in draft form, but is referred to as the “Bay Area Stipulated Injunction and Proposed Order.” This lawsuit by the Center for Biological Diversity charges U.S. EPA with failure to consult with FWS on the risks from 74 active ingredients to 11 listed species in the San Francisco Bay Area. Eight counties are affected: Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano and Sonoma. In its draft form, the injunction imposes different “no-use” buffers for some of the 74 active ingredients, depending on the type of species. The species included are: Alameda whipsnake, Bay checkerspot butterfly, California clapper rail, California freshwater shrimp, California tiger salamander, Delta smelt, salt marsh harvest mouse, San Francisco garter snake, San Joaquin kit fox, tidewater goby and Valley elderberry longhorn beetle. The buffers imposed by this injunction range from 100 to 700 feet for ground applications, and from 200 to 700 feet for aerial applications.

During the public comment period, DPR recommended U.S. EPA replace the proposed interim buffer zones with use limitations specified in our WEB-based database PRESCRIBE located at <www.cdpr.ca.gov/docs/endspec/prescint.htm>. U.S. EPA completed their review of public comments and expects the finalized injunction to include minor modifications, and sent to court with request to enter it by the end of January 2010. When the final injunction is published, DPR will be posting all maps of the affected counties and species included in each, and related materials on the Endangered Species Program section of our Web site at <<http://www.cdpr.ca.gov/docs/endspec/index.htm>>

All these injunctions share some common denominators:

- 1) They have resulted from the lack of consultation by U.S. EPA on the effects of “pesticide x” on “species y” with the U.S. Fish & Wildlife Service (FWS) or National Marine Fisheries Service (NMFS).
- 2) They impose a consultation schedule between U.S. EPA and FWS or NMFS, typically 4 to 6 years minimum.
- 3) Public vector control and invasive weed control programs are exempt. However, in the case of the Salmonid Injunction, the use limitations resulting from consultation on chlorpyrifos, diazinon and malathion do not provide exemptions for vector control or invasive weed control programs.
- 4) They can only be enforced through citizen lawsuits. Federal, State, County and other local authorities are “vacated” from enforcing them.
- 5) As products go through consultation, if deemed “not likely to adversely affect” a species they will be taken off the injunction list.
- 6) If deemed “likely to adversely affect” a species, U.S. EPA may impose restrictions to be enforced through labeling, as is the case of chlorpyrifos, diazinon and malathion.

This process is very contentious. It also affects DPR, since each injunction comes with its own set of buffers and species. DPR’s comprehensive, programmatic approach to protection of endangered species is being impacted by the multitude of injunctions and their litigation-derived buffers. Also, the imposition of court-ordered absolute buffers discourages good land stewardship efforts. Growers, who in previous years might have managed their fields to include field-edge vegetation cover, hedgerows, etc., now see their habitat enhancement efforts as a potential liability if listed species move in. Under these injunctions -even with exemptions- some invasive weed programs are still facing no-use zones that become refuges for noxious weeds like *Arundo sp.* Furthermore, since the lists of active ingredients included in these injunctions include many well-known active ingredients, pesticide applicators might seek other products not included in the “hit list,” some of which might be worse than the ones included in the injunction.

On October 15, 2009, the Center for Biological Diversity filed a Notice of Intent to sue U.S. EPA for additional species in the San Francisco Bay-Delta Area and the registration of difethialone and difenacoum and potential impacts on San Joaquin kit fox, salt marsh harvest mouse, and Alameda whip snake.

3. Update on U.S. EPA Activities: Field Volatility, Inerts and Spray Drift - Dr. Patti TenBrook, U.S. EPA, Region 9

Patti TenBrook presented an update on recent pesticide activities at U.S. EPA. She discussed; 1) the new public process for registration of new chemicals and new uses of existing chemicals; 2) the draft Pesticide Registration Notice on spray drift; 3) a petition

received by EPA regarding protection of children from spray drift; 4) the Advanced Notice of Proposed Rulemaking on pesticide inert ingredients; 5) harmonization of effects assessment methodologies between the Office of Pesticide Programs and the Office of Water; 6) proposed revisions to risk assessment approaches for workers, children of workers, and pesticides with no food uses; and 7) consideration of field volatilization of pesticides in risk assessments.

4. Air Monitoring Network – Randy Segawa

DPR plans to set up a network to sample ambient air for multiple pesticides in several communities on a regular schedule, over the next five years. DPR will use data gathered to evaluate and improve protective measures against pesticide exposure. The project is expected to begin later this year. Additional information is available on DPR's Web site at: http://www.cdpr.ca.gov/docs/emon/airinit/air_network.htm.

DPR proposes to sample one location in each community, collecting one or two 24-hour samples each week. Collecting two samples per week will provide a more robust estimate of exposure, but fewer pesticides and/or communities would be monitored. DPR provided a list of 25 to 34 pesticides it proposes to include. The more pesticides included in the monitoring, the fewer samples collected and/or communities would be monitored. DPR described its method to select 13 candidate communities. DPR proposes to select 2 to 5 of these communities for monitoring. The more communities included, the fewer samples and/or pesticides will be monitored.

DPR received written comments earlier from ARB and U.S. EPA. Other committee members provided comments at the meeting, but there was no consensus on any of the issues. Key suggestions included a request to monitor chlorthal-dimethyl, evaluate time trends of pesticide use for the candidate communities, and consider monitoring two communities for several years but a third community would change each year.

5. Public Comment

None received.

6. Agenda Items for Next Meeting

Lynn Baker suggested that the fumigant active ingredient methyl iodide be a topic for a PREC meeting, when DPR reaches a registration decision regarding the chemical.

Martha Harnly suggested that as climate change occurs there will be more pests leading to an increase in pesticide usage. Martha wanted to know if anyone at DPR was aware of the issue.

Martha Harnly suggested that Patti Tenbrook return to the PREC, once USEPA receives comments in response to its notices on field volatility, inerts and spray drift, and give the Committee a summary of the comments received.

The next meeting will be held on Thursday, March 18, 2010, in the Sierra Hearing Room on the second floor of the Cal/EPA building, located at 1001 I Street, Sacramento, California.

7. Adjourn